

§ 563.43

12 CFR Ch. V (1–1–08 Edition)

(A) The savings association is in troubled condition as defined at § 563.555 of this part;

(B) The savings association does not meet its regulatory capital requirements;

(C) The savings association commenced *de novo* operations within the past two years;

(D) OTS approved an application or notice under 12 CFR part 574 involving the savings association or its holding company within the past two years;

(E) The savings association entered into a consent to merge or a supervisory agreement within the past two years; or

(F) OTS or another banking agency initiated a formal enforcement proceeding against the savings association and the proceeding is pending.

(ii) OTS must notify the savings association in writing that it has imposed the notice requirement and must identify the circumstance listed in paragraph (c)(4)(i) of this section that supports the imposition of the notice requirement.

(iii) If OTS has imposed the notice requirement under this paragraph, a savings association must provide a written notice to OTS at least 30 days before the savings association may enter into a transaction with an affiliate or a subsidiary. The written notice must include a full description of the transaction. If OTS does not object during the 30-day period, the savings association may proceed with the proposed transaction.

[68 FR 57797, Oct. 7, 2003, as amended at 68 FR 75110, Dec. 30, 2003]

§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

Pursuant to 12 U.S.C. 1463(a) and 1468, a savings association, its subsidiaries and its insiders (as defined) shall be subject to the restrictions contained in 12 CFR Part 215, subparts A and B of the Federal Reserve Board's Regulation O, with the exception of 12 CFR 215.13, in the same manner and to the same extent as if the association were a bank and a member bank of the Federal Reserve System, except that:

(a) Such provisions shall be administered and enforced by the OTS;

(b) References to the term "bank holding company" shall be deemed to refer to "savings and loan holding company";

(c) References to "report of condition filed under 12 U.S.C. 1817(a)(3)" shall be deemed to refer to "Thrift Financial Report";

(d) The term *subsidiary* includes a savings association that is controlled by a company (including for this purpose an insured depository institution) that is a savings and loan holding company. A company has control over a saving association if it: directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities; or would be deemed to control the company under § 574.4(a) of this chapter or presumed to control the company under § 574.4(b) of this chapter, and in the latter case, control has not been rebutted. Notwithstanding any other provision of this section, no company shall be deemed to own or control another by virtue of its ownership or control of shares in a fiduciary capacity. When used to refer to a subsidiary of a savings association, the term *subsidiary* means a "subsidiary" that is controlled by the savings association within the meaning of 12 CFR part 574 of this chapter.

(e) References to the Reserve Bank or the Comptroller shall be deemed to include the Director of OTS; and

(f) References to the term "unimpaired capital and unimpaired surplus" shall be deemed to refer to "unimpaired capital and unimpaired surplus" as defined at § 560.93(b)(11) of this part.

[57 FR 45980, Oct. 6, 1992, as amended at 59 FR 53571, Oct. 25, 1994; 60 FR 66869, Dec. 27, 1995; 67 FR 77918, Dec. 20, 2002; 68 FR 57798, Oct. 7, 2003; 69 FR 76602, Dec. 22, 2004]

§ 563.47 Pension plans.

(a) *General.* No savings association or service corporation thereof shall sponsor an employee pension plan which, because of unreasonable costs or any other reason, could lead to material financial loss or damage to the sponsor. For purposes of this section, an employee pension plan is defined in section 3(2) of the Employee Retirement

Income Security Act of 1974, as amended. The prospective obligation or liability of a plan sponsor to each plan participant shall be stated in or determinable from the plan, and, for a defined benefit plan, shall also be based upon an actuarial estimate of future experience under the plan.

(b) *Funding.* Actuarial cost methods permitted under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, shall be used to determine plan funding.

(c) *Plan amendment.* A plan may be amended to provide reasonable annual cost-of-living increases to retired participants: *Provided, That*

(1) Any such increase shall be for a period and amount determined by the sponsor's board of directors, but in no event shall it exceed the annual increase in the Consumer Price Index published by the Bureau of Labor Statistics; and

(2) No increase shall be granted unless (i) anticipated charges to net income for future periods have first been found by such board of directors to be reasonable and are documented by appropriate resolution and supporting analysis; and (ii) the increase will not reduce the association's regulatory capital below its regulatory capital requirement.

(d) *Termination.* The plan shall permit the sponsor's board of directors and its successors to terminate such plan. Notice of intent to terminate shall be filed with the OTS at least 60 days prior to the proposed termination date.

(e) *Records.* Each savings association or service corporation maintaining a plan not subject to recordkeeping and reporting requirements of the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1954, as amended, shall establish and maintain records containing the following:

- (1) Plan description;
- (2) Schedule of participants and beneficiaries;
- (3) Schedule of participants and beneficiaries' rights and obligations;
- (4) Plan's financial statements; and
- (5) Except for defined contribution plans, an opinion signed by an enrolled actuary (as defined by the Employee

Retirement Income Security Act of 1974) affirming that actuarial assumptions in the aggregate are reasonable, take into account the plan's experience and expectations, and represent the actuary's best estimate of the plan's projected experiences.

[59 FR 66159, Dec. 23, 1994]

Subpart C—Securities and Borrowings

§ 563.74 Mutual capital certificates.

(a) *General.* No savings association that is in the mutual form shall issue mutual capital certificates pursuant to this section or amend the terms of such certificates unless it has obtained written approval of the Office. No approval shall be granted unless the proposed issuance of the mutual capital certificates and the form and manner of filing of the application are in accordance with the provisions of this section.

(b) *Eligibility Requirements.* The Office will consider and process an application for approval of the issuance of mutual capital certificates pursuant to this section only if the issuance is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution or bylaws.

(c) *Application form; supporting information.* An application for approval of the issuance of mutual capital certificates pursuant to this section shall be in the form prescribed by the Office. Such application and instructions may be obtained from the OTS. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) *Charter amendment.* No application for approval of the issuance of mutual capital certificates pursuant to this section may be filed unless the amendment to the mutual association's charter, constitution or bylaws or other actions conferring such authority shall have been approved pursuant to the procedures and requirements set forth in the mutual association's charter,